REMARKS

The applicant has resubmitted claim 74 and has amended claim 78 to include the limitations of claim 74. The applicant respectfully submits that these claims are allowable over the cited art, and include subject matter that has already been searched by the Office and thus, the applicant respectfully requests the Office to allow these claims. Furthermore, claim 83 has been amended to over come the objections from the Office and place it in condition for allowance.

Applicant's Assertion

The applicant's invention as recited in Claims 74 (system) and 78 (method) is unique and innovative because it is not a time-based system nor is the essence of its operation driven by time-based events.

Definition

The fundamental nature of a time-based system is that upon expiration of a time period, certain pre-ordained state changes occur depending upon the value of situational variables set forth by the expiration of the time period. The core characteristic of an event-driven system is that it is not subject to the occurrence of time-based events. In fact, unless a non-time-based event occurs (e.g. the auctioneer requests a different increment, accepts a bid, changes items for sale or sells an item), the system will not change its state. It simply remains in the current state.

Office Findings

1) Based upon the Final Office Action dated March 30, 2004, the Office concedes that Friedland et al is a time-based system.

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2) <u>Core Element of Obviousness Rejection</u>. The Office has rejected Claims 74 and 78 in the Final Office Action dated March 30, 2004, as being obvious under 35 U.S.C. 103(a) stating that " . . . the teachings of Dinwoodie that the auctioneer is in control of the psychology and pace of the auction event and that the auction event is not driven by the occurrence of time based events. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Friedland et al and incorporate the teachings of Dinwoodie to allow the auctioneer to remain in control of the auction event by managing the psychology and pace of the auction such as in a typical auction format. This would allow the auctioneer the ability to manage the pace of the auction based upon factors such as the bidding environment and aggressiveness of the participants as suggested by Dinwoodie."

General Remarks

The applicant respectfully disagrees with the Office's rejection under 35 U.S.C. 103. The applicant argues that the Office has not satisfied the prima facie case for obviousness in that a key element of the claims is missing from both of the references serving as the basis for the Office's rejection. The invention recited in previously submitted claim 74 and amended claim 78 includes the limitation that the system or process is not dependent upon the occurrence of time-based events. Friedland et al and Dinwoodie do not include such an element and thus, cannot be combined as the basis of an obviousness rejection. Furthermore, the applicant submits that it would not have been obvious to combine the Friedland et al and the Dinwoodie reference and thereafter modify the combined references to create a non-time based system.

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The Office has conceded that Friedland does not disclose a non-time based system. The applicant asserts that Dinwoodie also does not disclose a non-time based system. The applicant's position is based upon the fact that the Dinwoodie system is indeed driven by the occurrence of time-based events, as the use of "variable controlled amount(s) of time" (independent of the auctioneer) and "bidding acceptance window(s) of time" is inherent both in Dinwoodie's specification and in the claims. Under the Dinwoodie system, the auctioneer does not have the capability to manage the true psychology of a "typical" (as referenced by Dinwoodie in Col. 3, Lines 21-23) auction event.

The following references in the Dinwoodie specification represent the applicant's support for this position:

Evidence that Dinwoodie is a Time-Based System

In Col. 5, Lines 7-9, Dinwoodie states:

> "An additional parameter that is initialized is the duration or cycle time during which bids are accepted. This parameter may also be adjusted by auctioneer 24 during the auction".

In Col. 6, Line 4 and continuing through Line 18, Dinwoodie goes on to further state:

> "The (new) asking bid is incremented and a predetermined delay is incorporated into processor 26 before processor 26 begins accepting subsequent bids from participants at locations 12. In this manner, processor 26 controls subsequent bid acceptances to prevent overrunning of system 10 and establishes a bidding acceptance window of time. The delay is adjustable by auctioneer 24 based upon the particular bidding environment and aggressiveness of participants. After display 32 has been updated with current bidding information, the predetermined delay elapsed, new bids are then accepted at step

70. The process continues as asking bids are incremented and accepted until the

auctioneer determines the final asking bid has been accepted . . . ".

The system being described by Dinwoodie is clearly a time-based system. Dinwoodie's

decision to utilize a time-based approach versus an event-driven approach is further

evidenced by Dinwoodie's acknowledgement that the use of delays was imperative to

prevent overrunning of the system (Col. 6, Lines 7-10):

"In this manner, processor 26 controls subsequent bid acceptances to prevent

overrunning of system 10 and establishes a bidding acceptance window of time."

It should be noted that the use of delays, buffers and time windows are a common

practice in the industry to control the amount of processing required in a short period of

time in order to not overrun system capabilities. It is important to recognize that

converting such a system that uses delays, buffers and time windows for the purpose of

managing system throughput into a system where events may require significant

unlimited throughput peaks is not technically feasible, as no reasonable degree of success

is possible . . . very different technical approaches are needed based upon the time-based

merits of the system.

Evidence that the Auctioneer is Not Managing the Psychology or Pace of a Typical

Auction Event Under Dinwoodie

In order to manage the psychology of a traditional or typical auction event, the auctioneer

is required to manage the bid acceptance sequence whereby at least one specific

participant is actively bidding against another specific active participant and vice versa.

A crucial and essential tool for the auctioneer in managing the psychology of the auction

is the ability to invoke emotion in each of the active bidders, e.g. "I don't want bidder

#63 to get that item . . .especially after he made me raise my bid five times". With the Dinwoodie system, the auctioneer is not allowed the ability to manage the psychology of the auction event because the auctioneer is not allowed to determine the bids to be accepted. Within the Dinwoodie system, the auctioneer is relegated to simply controlling the increment or next asking amount (Col. 6, Lines 1-2) and whether the accepted bid is to be the final bid (Col. 6, Line 16). In Col. 5, Lines 10-11, Dinwoodie identifies the processor as being responsible for the acceptance of the bids:

"After initialization of the system, processor 26 begins accepting bids . . ."

Further, in Col 5, Lines 23-24, Dinwoodie again identifies the role of the processor to accept bids:

"Processor 26 determines at step 74 whether a bid has been accepted".

Dinwoodie suggests providing the capability for the auctioneer to affect the pace of the auction (Col. 6, Lines 9-12):

"The delay is adjustable by auctioneer 24 based upon the particular bidding environment
and aggressiveness of participants."

But even in this situation, the auctioneer is not managing or controlling the pace of a typical auction event; the auctioneer's only impact stems from his/her ability to adjust— not eliminate—the delay. Eliminating the delay would cause the system to overrun (Col. 6, Lines 7-10):

"In this manner, processor 26 controls subsequent bid acceptances to prevent
overrunning of system 10 and establishes a bidding acceptance window of time."

Therefore, the auctioneer is subservient not only to the system delays but also to the processor's bid acceptance algorithm and thus is not in complete control of a typical auction event; nor is he/she able to manage the psychology of the auction event, not to mention a typical auction event.

Applicant's Rebuttal to Office-Cited Dinwoodie References

The Office has cited various portions of the Dinwoodie reference as support for the position that Dinwoodie describes a non-time based system. The applicant addresses each of these citations and provides a rebuttal as to why the citation does not support the Office's position. Indeed, Dinwoodie is a time-based system.

Col. 3, Lines 17-24. The auctioneer functions in a capacity similar to the capacity of an auctioneer in a typical auction where participants are located at the auction site.

> Rebuttal: For clarification purposes, it should be noted that the Dinwoodie system does not integrate a local audience into the auction process (although Dinwoodie references a typical auction setting whereby participants are located at the auction site in Col. 3, Lines 21-23); the system is only operable for remote participants that are all subjected to the same delays. If Dinwoodie had intended for a local audience to be present and bidding against the remote audience, there is not a mechanism disclosed that would allow either the auctioneer or the processor to distinguish between a local or a remote bid (Col. 5, Lines 10-11):
>
> > "After initialization of the system, processor 26 begins accepting bids at step 70 from the participants at remote locations."
>
> The statement made in Dinwoodie Col. 3, Lines 21-23, "Auctioneer functions in a capacity similar to the capacity of an auctioneer in a typical auction where participants are located at the auction site" is for descriptive purposes only and serves to define "a typical auction". It can be argued that E-bay functions in a capacity similar to the capacity of an auctioneer in a typical auction where participants are located at the auction site because it (E-bay) accepts and rejects bids. It cannot be logically assumed from this Dinwoodie statement that the Dinwoodie system is not a time-based system nor can it be

argued from this statement that the auctioneer is in control of the Dinwoodie auction event.

Col. 4, Lines 48-54. The auctioneer inputs data relating to lot number, initial asking bid, predefined increments and foreign conversion factors.

Rebuttal: These referenced actions are only initialization values and are not used as non-time-based events nor are they used to manage the pace or psychology of the auction event. The auctioneer inputting data relating to lot number, initial asking bid, etc, in no way indicates that this system is not subject to the occurrence of time-based events.

Col. 5, Lines 60-65. The auctioneer is in complete control of the auction by deciding whether or not an accepted bid was the final asking bid for the lot.

Rebuttal: As stated within the aforementioned General Remarks Section, the auctioneer remains subservient to the system delays and the processor's bid acceptance algorithm and thus is not in complete control of the auction event. Deciding whether or not an accepted bid was the final asking bid in no way indicates that this system is not subject to the occurrence of time-based events.

Col. 6, Lines 9-13. Adjusting predetermined delays based upon particular bidding environment and aggressiveness of the participants.

Rebuttal: As stated within the aforementioned General Remarks Section, the auctioneer is not managing or controlling the pace of a typical auction event; the auctioneer's only impact stems from his/her ability to adjust—not eliminate—the delay. Eliminating the delay would cause the system to overrun. Therefore, the auctioneer is subservient to the system delays and the processor's bid acceptance

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algorithm and thus is not in complete control of the auction event. In addition, this statement further indicates that Dinwoodie is indeed a time-based system.

<u>Col. 6, Lines 15-20</u>. Determining that the final asking bid has been accepted.

Rebuttal: As stated within the aforementioned General Remarks Section, the auctioneer remains subservient to the system delays and the processor's bid acceptance algorithm and thus is not in complete control of the auction event. Determining that the final asking bid has been accepted in no way indicates that this system is not subject to the occurrence of time-based events.

<u>Col. 6, Lines 19-25</u>. Providing warnings that the current bid is about to be accepted as the winning bid and accepting the final bid.

Rebuttal: As stated within the aforementioned General Remarks Section, the auctioneer remains subservient to the system delays and the processor's bid acceptance algorithm and thus is not in complete control of the auction event. Providing warnings that the current bid is about to be accepted as the winning bid in no way indicates that this system is not subject to the occurrence of time-based events.

<u>Col. 6, Lines 25-30</u>. Blocking out all participants but the winning bidder and proceeds to the confirmation process with the winning bidder.

Rebuttal: As stated within the aforementioned General Remarks Section, the auctioneer remains subservient to the system delays and the processor's bid acceptance algorithm and thus is not in complete control of the auction event. Blocking out all participants but the winning bidder and proceeding to confirmation in no way indicates that this system is not subject to the occurrence of time-based events.

<u>Col. 6, Lines 35-40</u>. Providing instruction to the winning bidder.

Rebuttal: As stated within the aforementioned General Remarks Section, the auctioneer remains subservient to the system delays and the processor's bid acceptance algorithm and thus is not in complete control of the auction event. Providing instructions to the winning bidder in no way indicates that this system is not a time-based system.

Col. 6, lines 42-45. Reopening bidding to the entire audience at the level of the previous bid.

Rebuttal: As stated within the aforementioned General Remarks Section, the auctioneer remains subservient to the system delays and the processor's bid acceptance algorithm and thus is not in complete control of the auction event. Reopening bidding to the entire audience at the level of the previous bid in no way indicates that the on-going auction is not subject to the occurrence of time-based events.

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PAGE 15/20 * RCVD AT 4/21/2004 5:05:19 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-1/6 * DNIS:8729306 * CSID:7708040900 * DURATION (mm-ss):04-56

Objections to the Specification

The Office has objected to the substitute specification filed on October 31, 2003

on the grounds that it introduces new matter into the disclosure. The Office further states

the added material does not appear to be supported by the original disclosure and cites the

following items:

(a)   Page 24 line 6; the added a language "two times, three times, four times

and five times" appears to be new matter and changes the scope of the previous language.

This reference relates to multiple bid buttons on the Mohawk bidder display.

The original documentation states: "The Mohawk Bid Engine has five bid bars on

the Bidder Display; the main bar is for the next higher $100 increment from the last

accepted bid while the remaining four bars are for values $200/$300/$400/$500 higher

than the last accepted bid" . . . "For this process, the Bid System must output five values

to update the Bidder Display instead of a single value" (last paragraph on page 42 to first

paragraph on page 43).

The amended specification states: "The Mohawk Bid Engine has multiple bid

bars on the Bidder Device 110 display. In a configuration with five bid bars, the main

bar is for the next higher increment (default) from the last accepted bid while the

remaining four bars are for values two times, three times, four times and five times the

default increment."

The original documentation submits an example which is a preferred embodiment

of a system with a policy set to $100 and presents an example of the five values that

would be updated on the Bidder Display. The amended specification for additional

clarity—not new matter—defines the action of the system in terms of any policy. No

new matter was defined in the amended specification—simply a restatement of how it would operate for any policy—which a student having ordinary skill in the art would have learned from the original preferred embodiment of $100 increments.

(b)   Page 24, line 13; the added language "if two or more remote bidders submit bids of different values . . . sells the item" appears to be new matter and changes the scope of the previous language.

This reference relates to the Mohawk bid acceptance methodology.

The original documentation stated on page 42, middle of the page: "The Mohawk Bid Engine is the same as the Cherokee Bid Engine described in the previous section with added capabilities for: . . ." The original documentation also states on page 38 last paragraph "Figure 17 schematically illustrates the acceptance of a remote bid . . ." It is the applicant's position that language in the amended specification simply clarifies the operation in conjunction with Figure 17. It should also be noted, that the source code submitted with the original application provides this capability and thus, this amendment to the specification does not add new matter.

(c)   Page 33 Line 27 – Page 4 Line 9; the added language "dual modems . . . quality of the encoded video" appears to be new matter and changes the scope of the previous language.

In the original documentation . . .page 59 last paragraph " stating . . . via dual internal modems is also possible . . ."

The amended language simply clarifies the original statement in accordance with the original specification and original source code submitted and it is the applicant's position that it does not introduce new matter.

The Office has requested the applicant to ensure that no new matter has been introduced. As stated when the substitute specification was filed, the applicant submits that no new matter has been introduced in the amended specification. The substitute specification only clarifies features that were included in the original specification and the source code submitted at the time of filing.

Conclusion

For all these foregoing reasons, applicant respectfully requests the Office to allow the currently pending claims 74, 78 and 83. The applicant submits that these claims are allowable and that all of the Office's reasons for rejection have been overcome and that these claims can and should issue as a valid U.S. Patent.

Further, the applicant respectfully requests the Office to accept the substitute specification as no new matter has been entered, but rather, the substitute specification only includes matter in the original specification and the source code submitted with the original specification.
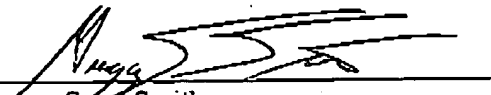
The applicant respectfully submits that the Office's conclusion of obviousness via 35 U.S.C. 103(a) cannot be substantiated because (a) neither of the references combined by the Office describe the element of a non-time based event system and (b) it would not be obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the method of Friedland et al—a **time-based system**—and incorporate the teachings of Dinwoodie—**another time-based system**—to allow the auctioneer to remain in control of the auction event by using an **event-driven system** and managing the psychology and pace of the auction such as in a typical auction format. **No reasonable expectation of success** from such a combined Friedland et al/Dinwoodie system is possible, as a Friedland et al and Dinwoodie combination "teaches away" from a system that allows the auctioneer to remain in control as stated above. A combination of this type for the purpose of creating the applicant's system would be technically impossible; such an undertaking would require reconstruction and redesign of the elements shown in Friedland et al as well as a change in the basic principle under which

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the Friedland et al construction was designed to operate. The applicant respectfully

presents that the aforementioned rebuttal serves to satisfy the legal standard of a

preponderance of convincing evidence and hereby submits that Claims 74 (system) and

78 (method) are in condition for allowance.

The applicant respectfully requests the Office to call the applicant's attorney if

there are any questions or amendments that can be handled through an examiner's

amendment.

There are no fees due for this response. If there are any questions, applicant

respectfully requests the Office to call the applicant's attorney.

Respectfully submitted,

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